

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ZENIMAX MEDIA INC. and ID SOFTWARE LLC

Plaintiffs,

v.

OCULUS VR, LLC, PALMER LUCKEY AND
FACEBOOK, INC.,

Defendants.

Case No.: 3:14-cv-01849-P

**DEFENDANTS’ REPLY IN SUPPORT OF THEIR MOTION FOR PROTECTIVE
ORDER PROHIBITING PLAINTIFFS FROM UNILATERALLY SETTING DATES
AND TIMES FOR DEPOSITIONS (ECF NO. 237)**

Defendants Oculus VR, LLC (“Oculus”), Palmer Luckey and Facebook, Inc. (“Facebook” and, collectively, “Defendants”) were forced to file this motion only because counsel for plaintiffs ZeniMax Media Inc. and id Software LLC’s (collectively, “Plaintiffs”) requested that witnesses “appear for deposition on the dates identified” in their deposition notices even though Defendants’ counsel had informed Plaintiffs’ counsel that those dates were unworkable for certain witnesses. *See* ECF No. 237 at pp. 13-14.

In response to Defendants’ motion, Plaintiffs rushed to file their response days ahead of the Court’s deadline, even though the Court had advised the parties to work together on finding mutually agreeable dates. In fact, Defendants were already working to provide dates for each of those witnesses, except for Facebook’s CEO, Mark Zuckerberg.¹ Since Defendants initially sought relief from the Court, they have proposed a series of deposition dates to Plaintiffs’ counsel:

¹ Defendants are concurrently filing an Apex motion to prevent Mr. Zuckerberg’s deposition as Plaintiffs have not made a showing that Mr. Zuckerberg has any unique personal knowledge relevant to this litigation.

- Defendants offered two potential dates for the deposition of Brant Lewis, an Oculus software developer—December 4, and 15—but Plaintiffs did not accept either date. The parties are currently working on finding a mutually convenient date for Mr. Lewis’s deposition.²
- Amin Zoufonoun, Facebook’s Vice President of Corporate Development’s deposition is now scheduled for January 19.
- On November 6, Defendants’ counsel informed Plaintiffs that Palmer Luckey, Oculus’s founder, is available for deposition on January 26, 2016, but Plaintiffs’ have not confirmed this date for his deposition.
- On November 3, Defendants’ counsel informed Plaintiffs that Brendan Iribe, Oculus’s Chief Executive Officer, is available for deposition on February 4, 2016, but Plaintiffs have not confirmed this date for his deposition.
- On November 5, Defendants’ counsel informed Plaintiffs that Laird Malamed, Oculus’s Chief Operating Officer, is available for deposition on February 10, 2016, but Plaintiffs have not confirmed this date for his deposition.
- Finally, Facebook’s motion for a protective order barring Plaintiffs from deposing Mr. Zuckerberg is being filed concurrently with this brief.

Plaintiffs also have largely failed to respond to Defendants’ offered deposition dates or cooperate with Defendants. Indeed, even after Defendants filed this motion, Plaintiffs served another round of 12 deposition notices without first asking Defendants to provide available dates for the depositions.

For these reasons, and those set forth in Defendants’ opening brief, the Court should require Plaintiffs to notice future depositions only after conferring with Defendants’ counsel to determine dates that witnesses and counsel are actually available for deposition, and barring Plaintiffs from proceeding with the depositions of Brant Lewis, Laird Malamed, Brendan Iribe, Palmer Luckey, and Mark Zuckerberg as noticed.

² Plaintiffs have advised Defendants that they are no longer standing on their deposition notice to Mr. Lewis.

Date: November 13, 2015

Respectfully submitted,

/s/ Heidi L. Keefe

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CERTIFICATE OF SERVICE

On November 13, 2015, I hereby certify that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). I hereby certify that I have served all counsel who are deemed to have consented to electronic service or by another manner authorized by Federal Rules of Civil Procedure 5(b)(2).

/s/ Heidi L. Keefe
Heidi L. Keefe